IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6590 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILAVAR.U.PATEL - Petitioner(s)

Versus

DIVISIONLA CONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

RULE NOT RECD BACK for Respondent No(s).: 1.

MR ASHISH M DAGLI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award of the Labour Court, Bharuch, passed in Reference LCB No.764 of 1990, whereby the respondent was directed to reinstate the petitioner with continuity of service and 30 % back wages. The petitioner has challenged that part of the

award by which he was denied 70 % of the back wages.

2.0 The brief facts of the case are that the petitioner was working as a Conductor with the respondent Corporation. While the petitioner was on duty on 07.03.1989 shortage in the collection of cash from the issuance of tickets was reported. Therefore, departmental inquiry was held, pursuant to which the petitioner was dismissed from service on 03.04.1990.

2.1 Being aggrieved by the said order, the petitioner raised a dispute before the Labour Court by way of a reference. The Labour Court, after hearing the parties and after considering the evidence on record, passed the award as aforesaid. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. In the impugned award, the Labour Court has observed that the petitioner himself has stated in his cross-examination that he was doing agricultural activity and that if the monsoon was good, he could earn up to Rs.13,000/- in that season itself. The Labour Court while passing the impugned award has given the benefit of doubt to the petitioner. In my

opinion, the Labour Court was justified in awarding only 30 % back wages to the petitioner.

3.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua denying the petitioner 70 % of back wages is required to be confirmed.

4.0 In above view of the matter, the petition is dismissed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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